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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

WOODLAND PARK MANAGEMENT, LLC, et al., **Plaintiffs and Respondents,** **v.** **CITY OF EAST PALO ALTO et al.,** **Defendants and Appellants.**	**A123885** **(San Mateo County Super. Ct. Nos. CIV 469315 & CIV 474682)**

The Rent Stabilization and Eviction for Good Cause Ordinance (RSO) was adopted by popular vote in 1988 in the City of East Palo Alto. RSO section 8.G requires the City of East Palo Alto Rent Stabilization Board (the Board)[1] to issue annual "Certificate[s] of Maximum Legal Rent" (hereafter Certificate(s)) stating the maximum allowable rent, or rent ceiling, landlords may charge tenants. The parties disagree on how rent ceilings should be calculated under the RSO. On August 31, 2009, this court affirmed an order invalidating an ordinance adopted by City that based increases to the rent ceiling on the previously charged rent rather than on the previous rent ceiling. (*Page*

[1] Defendants and appellants City of East Palo Alto, City Council of the City of East Palo Alto (the City Council), and the Board are hereafter collectively referred to as "City." Plaintiffs and respondents Woodland Park Management, LLC (formerly known as Page Mill Management, LLC); 5 Newell, LLC; and 15 Newell, LLC, are hereafter collectively referred to as "Landlords."

Mill Management, LLC, et al. v. City of East Palo Alto et al. (Aug. 31, 2009, A121631 [nonpub. opn.]) (*Page Mill I*).)

In July 2008, before issuance of this court's decision in *Page Mill I*, the Board adopted revised rules and regulations (hereafter New Rule(s)) incorporating the formula for calculating rent ceilings used in the ordinance challenged in *Page Mill I*. Landlords filed a petition for a writ of mandate and a complaint for declaratory and injunctive relief challenging the New Rules, and the trial court ordered that a writ of mandate issue commanding City to set aside the New Rules, take no action to enforce the New Rules, and take no other action contrary to the court's statement of decision. The trial court subsequently entered a judgment encompassing the order issuing a writ of mandate and resolving the remaining claims. On appeal, City contends the trial court erred in invalidating the New Rules and there was no proper basis for the writ language prohibiting City from taking actions contrary to the trial court's statement of decision. Landlords cross-appeal, contending the court erred in rejecting a number of its alternative arguments for invalidating the New Rules. We vacate that portion of the trial court's writ of mandate prohibiting City from taking actions contrary to the statement of decision and otherwise affirm the judgment.

BACKGROUND[2]

As noted previously, the RSO was adopted by popular vote in 1988 and RSO section 8.G requires the Board to issue annual Certificates stating the rent ceilings for particular units. RSO section 11.A provides the formula for computing the amount that rent can be increased, known as the "Annual General Adjustment" (AGA). On May 25, 1988, shortly after the RSO's adoption, the Board promulgated rules 1600-1606 of the Board Rules and Regulations[3] (hereafter Rule(s)) in accordance with its powers and duties under RSO section 6. Rule 1601 specifies that the AGA is added to the previous

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2 The background facts are taken from the administrative record submitted to the trial court with Landlords' petitions.

3 As of March 30, 2010, complete sets of the RSO and the Rules can be found at <http://www.ci.east-palo-alto.ca.us/housingdiv/rent.html>.

year's rent ceiling as set out in the Certificates. The Board calculates the rent increases and issues Certificates to landlords and tenants specifying the new rent ceiling. (RSO, §§ 8.G, 11; Rules 1600-1601.)

In October and November 2007, City issued the 2007 Certificates for rent-controlled units owned and operated by Landlords. The parties agree the recent ceilings in those Certificates were calculated by adding the AGA to the prior year's rent ceilings. At the end of November 2007, Landlords issued notices of rent increase to their tenants, in some cases raising the rent to the rent ceiling as stated on the applicable Certificates for the units. The increases averaged 9 percent, ranging from zero to a high of 47 percent.

As a result of tenant complaints, on January 8, 2008, the City Council unanimously approved Ordinance No. 308 (Urgency Ordinance), which limited rent increases for every residential unit registered in the RSO program to 3.2 percent of the rent being charged as of December 1, 2007. The Urgency Ordinance became effective on January 8, 2008, and by its terms expired on June 30, 2008.

On January 16, 2008, Landlords filed a petition for a writ of mandate and complaint for declaratory relief[4] challenging City's Urgency Ordinance on the grounds it violated the Elections Code, the Costa-Hawkins Rental Housing Act (Civ. Code, § 1954.50 et seq.) (Costa-Hawkins), the Petris Act (Civ. Code, §§ 1947.7, 1947.8), Government Code section 36937, the California Constitution, and the RSO. On March 11, the trial court entered a statement of decision and an order directing issuance of a writ of mandate (hereafter March Order) commanding City to set aside the Urgency Ordinance and "take no action to enforce [the Urgency Ordinance] or otherwise contrary to [the s]tatement of [d]ecision in this matter." City filed a notice of appeal, which resulted in the August 2009 decision in *Page Mill I*.

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4 *Page Mill Management, LLC, et al. v. City of East Palo Alto, et al.* (Super. Ct. San Mateo County, 2008, No. CIV 469315) (hereafter CIV 469315).

On July 9, 2008, the Board adopted the New Rules through Resolution RSB 08-01, which revised Rules 1600, 1601, 1602, 1603, and 1605, rescinded Rule 1606, and added New Rule 1607. The New Rules change the annual rent registration process, amend the method for calculating rent ceilings, and provide for recontrol of tenancies whose initial rents are freely negotiated under Costa-Hawkins. On July 14, Landlords filed a petition for a writ of mandate and complaint for declaratory and injunctive relief to invalidate the New Rules.[5] Landlords alleged the New Rules violate the RSO, the Petris Act, Costa-Hawkins, the judicial powers clause of the California Constitution (Cal. Const., art. VI, § 1), and Landlords' procedural and substantive due process rights. Landlords also alleged the New Rules are unlawfully retroactive. The parties stipulated to consolidate CIV 474682 with CIV 469315, in which a declaratory relief cause of action remained unresolved.

On November 26, 2008, the trial court ordered that a writ of mandate issue commanding City to set aside the New Rules and take no action to enforce them or any other action contrary to that court's statement of decision in the matter (hereafter November Order). The trial court concluded in its statement of decision that the New Rules impermissibly amend the RSO's formula for calculating rent ceilings and the Board exceeded its authority in adopting the New Rules. The court further held New Rules 1601, 1602, and 1607 violate Costa-Hawkins and New Rules 1601 and 1602 violate the Petris Act. The trial court rejected Landlords' claims that: New Rule 1603 violated the judicial powers clause, adoption of the New Rules was unlawful because the Board lacked landlord representatives required by the RSO, adoption of the New Rules violated Landlords' rights to procedural and substantive due process, and the New Rules are unlawfully retroactive.[6]

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[5] *Woodland Park Management, LLC, et al. v. City of East Palo Alto, et al.* (Super. Ct. San Mateo County, 2008, No. CIV 474682) (hereafter CIV 474682).

[6] The trial court's rejection of these claims is the basis of the Landlords' cross-appeal. The trial court also rejected Landlords' arguments that City was estopped from claiming the Certificates are void or invalid and that adoption of the New Rules violated

The parties entered into a stipulation in which they agreed the statements of decision issued in CIV 469315 and CIV 474682 resolved all of Landlords' causes of action, and the writs of mandate "provided the same relief and have the same force and effect as that which could be obtained by a declaratory judgment." The parties stipulated that Landlords' then pending motion for summary judgment on causes of action for declaratory and injunctive relief should be removed from the court's calendar and that the court should enter a final judgment. In accordance with the stipulation, the trial court entered a final judgment in favor of Landlords on December 19, 2008. City appealed from the November Order and the final judgment; Landlords filed a notice of cross-appeal. Those appeals are before us in the instant case.

In *Page Mill I*, this court affirmed the March Order in CIV 469315, with the exception of the language prohibiting City from taking any action contrary to the trial court's statement of decision.

DISCUSSION

I. *Validity of the New Rules*

A. *Standard of Review*

"When a statute empowers an administrative agency to adopt regulations implementing the legislation, the agency acts in a 'quasi-legislative' capacity, having been delegated the Legislature's lawmaking power. [Citation.]" (*Aguiar v. Superior Court* (2009) 170 Cal.App.4th 313, 323 (*Aguiar*).) In enacting such regulations, an agency is not limited to the exact provisions of a statute; instead, it can " 'fill in the details' " of a statutory scheme. (*Id*. at p. 325; see also *Ford Dealers Assn. v. Department of Motor Vehicles* (1982) 32 Cal.3d 347, 362 (*Ford Dealers*); *Danekas v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2001) 95 Cal.App.4th 638, 644 (*Danekas*).) Administrative regulations are generally " ' "shielded by a presumption of regularity" [citation] and presumed to be "*reasonable and lawful*." [Citation.] The party

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Landlords' property rights under the takings clause of the California Constitution. Landlords do not raise these contentions in their cross-appeal and therefore they are not before this court.

challenging such regulations has the burden of proving otherwise. [Citation.]' [Citation.]" (*Danekas*, at p. 644.)

B. *New Rules 1601 and 1602 are Inconsistent with the RSO's Method of Calculating Rent Increases*

The central issue in both *Page Mill I* and the instant appeal concerns the proper method of calculating a new rent ceiling when the rent charged is less than the maximum allowable rent specified in the Certificate for a unit. The trial court agreed with Landlords' contention that the AGA is added to the prior year's rent ceiling, and invalidated all of the New Rules after concluding the Board exceeded its authority by changing the formula for calculating rent ceilings. The court rejected City's argument that the RSO requires the AGA to be added to the rent actually charged the prior year. On appeal, City contends New Rules 1601 and 1602 are consistent with the RSO and clarify the methodology for computing rent ceilings.

Our prior decision in *Page Mill I* interpreted the RSO and Rule 1601, and concluded they require the rent ceiling to be calculated by adding the AGA to the previous year's rent ceiling specified in the Certificate for the unit. New Rule 1601 sets forth a methodology for calculating rent increases in units with a previously certified rent ceiling and New Rule 1602 sets forth a methodology for calculating rent increases in units with no previously certified rent ceiling. New Rule 1601.3[7] states in part that if "a landlord charges an amount less than the rent ceiling for one or more years," all subsequent rent ceilings "will be calculated by taking the previous year's actual and lawfully-charged rent and increasing it by the amount of the current year's AGA." New Rule 1602.3 states in part that "For non-exempt units that have had a vacancy since January 1, 1996, the rent ceiling will be the lawfully charged rent at the beginning of the

[7] New Rule 1601.3 is a subpart of New Rule 1601. Each subsequent similar reference to a Rule or New Rule also refers to a subpart of the rule number preceding the decimal point.

most recent tenancy increased by any AGA that the landlord can prove was lawfully taken." These provisions directly contradict our construction of the RSO in *Page Mill I*.[8]

We requested that the parties provide supplemental briefs regarding the effect of the *Page Mill I* decision on the instant appeal. City concedes the decision has collateral estoppel effect in this proceeding on the issue of whether the AGA should be added to the prior actual rent or the prior rent ceiling and requires invalidation of New Rules 1601 and 1602. (See *Wright v. Ripley* (1998) 65 Cal.App.4th 1189, 1193 [" 'Collateral estoppel precludes a party to an action from relitigating in a second proceeding matters litigated and determined in a prior proceeding.' "].)[9] Accordingly, we conclude New Rules 1601 and 1602 are invalid as inconsistent with the RSO.

C. *New Rule 1603 Violates the Judicial Powers Clause of the California Constitution*

Article VI, section 1 of the California Constitution provides: "The judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts . . . ." Judicial power is also vested in certain administrative agencies. Landlords contend the trial court erred in rejecting their argument that New Rule 1603, which governs appeals of Certificates, improperly grants judicial power to the Board's hearing examiners. The relevant part of the rule states: "The decision of the hearing examiner will be the final

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8 That our analysis rested in part on the May 25, 1988 version of Rule 1601 does not alter this conclusion. The Board promulgated Rule 1601 shortly after the voters adopted the RSO, and that version is therefore entitled to great weight. (See *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1388-1389 ["The contemporaneous construction of a new enactment by the administrative agency charged with its enforcement, although not controlling, is entitled to great weight."].) The same cannot be said for the New Rules. (See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1105, fn. 7 ["[W]hen an agency's construction [of an ordinance] ' "flatly contradicts" ' its original interpretation, it is not entitled to 'significant deference.' "].)

9 Arguably, this appeal is actually a subsequent proceeding in *Page Mill I*, because CIV 469315, in which a declaratory relief claim remained unresolved, was consolidated with CIV 474682. If this is in fact a subsequent proceeding, then the law of the case doctrine requires us to adhere to the construction of the RSO in *Page Mill I*. (*People v. Stanley* (1995) 10 Cal.4th 764, 786.)

decision of the Board. Where the final decision on appeal changes the rent ceiling stated in the original Certificate, a new Certificate of Maximum Legal Rent will be promptly provided to both landlord and tenant."

In *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348 (*McHugh*), a local charter amendment authorized the rent board to issue an administrative order allowing a tenant to withhold future rent to recoup past overcharges. The tenant also could rely on the board's order as a defense to any unlawful detainer action filed for nonpayment of rent. (*Id*. at pp. 354, 376.) Reiterating the principle that "agencies not vested by the Constitution with judicial powers may not exercise such powers" (*id*. at p. 356), the California Supreme Court articulated the following standard: "An administrative agency may constitutionally hold hearings, determine facts, apply the law to those facts, and order relief—including certain types of monetary relief—so long as (i) such activities are authorized by statute or legislation and are *reasonably necessary* to effectuate the administrative agency's *primary, legitimate regulatory purposes,* and (ii) *the 'essential' judicial power* (i.e., the power to make enforceable, binding judgments) *remains ultimately in the courts, through review of agency determinations*." (*Id*. at p. 372.) The court found that under the local administrative charter, " 'the principle of check' " was not respected because before a court could rule on whether to stay the rent board's withholding order, the order was immediately enforceable at the discretion of a private party. (*Id.* at pp. 376-377; see also *Floystrup v. City of Berkeley Rent Stabilization Bd.* (1990) 219 Cal.App.3d 1309, 1316 (*Floystrup*) [Berkeley rent control ordinance violated the judicial powers clause because it "authorize[d] either the [rent b]oard or the tenant to withhold rent without court review or approval if the landlord fails to register the apartment unit or if he or she demands or receives excessive rent"].)

Landlords' concern with New Rule 1603 is not that it precludes review by the courts of the hearing examiner's decision. Rather, they take issue with the provision that requires the hearing examiner to "promptly provide[]" a new Certificate when the examiner's decision changes the rent ceiling stated on the original Certificate. According

to Landlords, the Board could have provided for a waiting period to avoid violating the judicial powers clause.[10]

City rejoins that New Rule 1603 does not interfere with judicial review because RSO section 18 expressly makes the hearing examiner's decision reviewable by the court.[11] We are not persuaded by City's argument. RSO section 18 simply subjects the hearing examiner's decision to judicial review. However, it does not address when that decision becomes final and effective.[12] Neither does City identify any other provision in the RSO, Rules, or New Rules that imposes any qualifications on the effective date of the hearing examiner's decision under New Rule 1603.

By its terms, New Rule 1603 makes the hearing examiner's decision changing the rent ceiling effective immediately because the examiner is required to "promptly provide[]" a new Certificate reflecting the new rent ceiling. Because a landlord can only charge up to the amount stated in a Certificate, if a hearing examiner lowers the rent ceiling and immediately issues a new Certificate, the tenant can begin paying the lower rent amount before the landlord has an opportunity to seek judicial review of the hearing examiner's decision. In this regard, New Rule 1603 is similar to the provisions found

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10 The Board has provided for such a waiting period under Rule 1242, which governs appeals of an individual rent adjustment decision. Former Rule 1242.9 provided in part that a hearing examiner's decision was not stayed pending appeal, and that on matters not appealed to the Board, the decision of the hearing examiner was final. In Resolution 03-01, adopted March 12, 2003, the Board stated that *McHugh, supra*, 49 Cal.3d 348 "prohibits a decision by a hearing examiner or by the . . . Board from becoming effective until said decision can be reviewed by a court of law." The Board then replaced former Rule 1242.9 with the following: "Any decision made by a hearing examiner or by the [B]oard shall not be final unless and until either a) no appeal is taken by any party or b) the time to seek judicial review has lapsed." (Rule 1242.9.)

11 RSO section 18 is entitled "JUDICIAL REVIEW" and provides: "A landlord aggrieved by any action or decision of the Board may seek judicial review in a court of appropriate jurisdiction."

12 In *McHugh*, the charter amendment contained a section providing for judicial review of the board's decision. (*McHugh, supra*, 49 Cal.3d at p. 354.) Notwithstanding that provision, the California Supreme Court held the charter amendment violated the judicial powers clause. (*Id*. at pp. 376-377.)

unconstitutional in *McHugh, supra*, 49 Cal.3d 348 and *Floystrup, supra*, 219 Cal.App.3d 1309. We conclude New Rule 1603 is invalid because it violates the judicial powers clause.

D. *New Rule 1605 Violates the Petris Act*

The Petris Act was enacted in 1986 and codified in Civil Code sections 1947.7 and 1947.8.[13] (*Sego v. Santa Monica Rent Control Bd*. (1997) 57 Cal.App.4th 250, 256.) The statute explains that "the operation of local rent stabilization programs can be complex and . . . disputes often arise with regard to standards of compliance with the regulatory processes of those programs. Therefore, it is the intent of the Legislature to limit the imposition of penalties and sanctions against an owner of residential rental units where that person has attempted in good faith to fully comply with the regulatory processes." (§ 1947.7, subd. (a).) In addition to limiting penalties and sanctions, the Petris Act requires rent control ordinances to "provide for the establishment and certification of permissible rent levels for the registered rental units, and any changes thereafter to those rent levels." (§ 1947.8, subd. (a).) Both the landlord and tenant may appeal the determination of the maximum legal rent. (§ 1947.8, subd. (b).) Under the Petris Act, the maximum allowable rent reflected in the certificate "shall, in the absence of intentional misrepresentation or fraud, be binding and conclusive upon the local agency unless the determination of the permissible rent levels is being appealed." (§ 1947.8, subd. (c).)

New Rule 1605 provides grounds for redetermination of a rent ceiling. Under the rule, "[a] landlord or tenant who wishes to contest the rent ceiling after the appeal period has expired must file a statement of the basis for redetermination." Landlords maintain this rule abrogates the "binding and conclusive" nature of the Certificates under the Petris Act.

The Petris Act provides a single exception to the binding and conclusive nature of a Certificate not being appealed: intentional misrepresentation or fraud. (§ 1947.7,

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[13] All further undesignated section references are to the Civil Code.

subd. (c).) New Rule 1605 provides two additional bases for redetermination: "(b) a failure of either the landlord or the tenant to receive a copy of the Certificate, or (c) error determined by . . . City, or error acknowledged by the landlord and tenant, *including* failure to accurately reflect a prior certification, an individual rent adjustment decision, or the amounts and dates of past rents." (Italics added.) The rule does not comprehensibly define the types of "error" the Board can deem sufficient to redetermine a rent ceiling, granting it broad discretion to do so. This rule thus substantially expands the circumstances under which the Board can disregard the binding and conclusive nature of the Certificates, and thereby violates the Petris Act's limitation that only intentional misrepresentation or fraud is a sufficient ground for doing so.[14]

E. *New Rule 1607 is an Invalid Amendment to the RSO*

Landlords contend New Rule 1607 is invalid because the Board does not have the authority to promulgate rules subjecting tenancies to rent control after a Costa-Hawkins vacancy.

In 1995, the Legislature enacted Costa-Hawkins. (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2009) 173 Cal.App.4th 13, 24 (*Apartment Assn.*).) One of the statute's provisions established what is referred to as "vacancy decontrol," which allows landlords to negotiate the initial rental rate for a dwelling or unit following a vacancy, except in specified situations. (§ 1954.53, subd. (a); *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1237 (*Action Apartment*).) In effect, landlords can " '. . . impose whatever rent they choose at the commencement of a

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14 The parties dispute the length of time the Certificates are deemed binding and conclusive under the Petris Act. City maintains the Certificates are binding and conclusive only during the year for which they are issued. Landlords argue that "Petris Certificates are . . . binding into the future rather than as a snapshot in time." This issue is only relevant to whether the Board can correct errors on past Certificates when issuing new Certificates. The dispute arises in the context of the parties' disagreement over the proper method of calculating rent ceilings. Because we have already determined that our decision in *Page Mill I* is binding on the issue of rent ceiling computations for units with a previously certified rent, we need not decide whether and when Certificates expire under the Petris Act.

tenancy.' [Citation.]" (*Action Apartment*, at p. 1237.) Under New Rule 1607.A.1, the new rent established after a Costa-Hawkins vacancy becomes "the new rent ceiling for the unit for all purposes including, but not limited to, the computation of all future rent adjustments. The unit will otherwise remain subject to all other regulations of the [Board]." The parties agree that Costa-Hawkins prevails over the RSO, which does not provide for vacancy decontrol. (See *Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 141 [municipal charter amendment relating to rent control "cannot be given effect to the extent that it conflicts with" state law].) Although Costa-Hawkins does not prohibit the subsequent regulation of rents for units occupied before 1995,[15] the statute does not itself regulate those subsequent rents, nor does it provide any guidance on how a rent stabilization program can properly recontrol units after a Costa-Hawkins vacancy.

New Rule 1607.A.1 conforms the RSO to Costa-Hawkins by specifying that "since January 1, 1999, a landlord may establish the 'initial rent' for any non-exempt unit." (§ 1954.53, subd. (a)(3).) But New Rule 1607 goes further and subjects those tenancies to rent control under the RSO. The parties dispute whether the reassertion of rent control over post-Costa-Hawkins tenancies can be established through Board rules or if it is necessary for the electorate to amend the RSO or adopt a new ordinance.[16]

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[15] As a general rule, Costa-Hawkins permanently exempts from any rental rate controls newly-constructed housing issued a certificate of occupancy after February 1, 1995. (§ 1954.52, subd. (a)(1); *Apartment Assn., supra*, 173 Cal.App.4th at p. 25.)

[16] On July 24, 2009, Landlords requested we take judicial notice of a proposed new rent stabilization ordinance City was considering placing on the November 2009 ballot which, inter alia, regulates post-Costa Hawkins tenancies. Landlords maintain the proposed ordinance undermines City's claim the Board has the authority to promulgate rules regulating those units. We decline to grant judicial notice of the proposed ordinance because it is not necessary to our decision.

Landlords note that "[s]ome cities (like San Francisco and Oakland) have ordinances that explicitly recontrol rents after a new tenancy begins" and attached as exhibits to their reply brief excerpts from the San Francisco Administrative Code and the Oakland Municipal Code. City has objected to our consideration of the excerpts. We have not relied on the excerpts, which are irrelevant to whether the Board had authority to promulgate New Rule 1607.

RSO section 6.E authorizes the Board to "issue and follow such rules and regulations, including those that are contained in [the RSO], as will further the purposes of [the RSO]." City contends that section "expressly gives the Board the right and obligation" to adopt rules implementing Costa-Hawkins.

A board's authority is limited to that delegated to it by law. (*People v. Parmar* (2001) 86 Cal.App.4th 781, 799.) " 'Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations.' [Citations.]" (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11 (*Psychology Providers*); accord, *San Francisco Fire Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 653, 668.) On the other hand, an administrative agency is not limited to the exact provisions of a statute when adopting regulations to enforce its mandate and may enact rules and regulations which serve as a " 'gap filler' to 'fill in the details' of the authorizing legislation." (*Aguiar, supra*, 170 Cal.App.4th at p. 325; see also *Ford Dealers, supra*, 32 Cal.3d at p. 362; *Danekas, supra*, 95 Cal.App.4th at p. 644.) After Costa-Hawkins, the RSO no longer limits a landlord's ability to negotiate the initial rent for a new tenancy. But there is nothing in the RSO indicating whether a unit's rent can subsequently be reregulated under the ordinance. New Rule 1607 does more than further the purposes of the RSO by filling in a gap. It enlarges the scope of the RSO so that the ordinance applies to tenancies that began outside of its parameters—those whose initial or base rent is governed by Costa-Hawkins and not RSO section 10.[17] New Rule 1607 therefore is an impermissible expansion of the RSO and beyond the scope of the Board's authority to promulgate. (See *Psychology Providers, supra*, 51 Cal.3d at p. 11.)

[17] RSO section 10.A sets the base rent at the rent lawfully charged on April 1, 1985. For units where no rent was in effect on April 1, 1985, "the base rent shall be the most recent lawful periodic rent in effect for that rental unit during the six months preceding that date, the base rent shall be a good faith estimate of the median rent [in] effect for comparable units in the City of East Palo Alto on April 1, 1985." (RSO, § 10.A.)

Whether rental rates for a unit should be reregulated under the RSO subsequent to a Costa-Hawkins vacancy and *how precisely that should occur* is for the voters of East Palo Alto to decide. Elections Code section 9217 states, in pertinent part, that "[n]o ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance." "An amendment is [defined as] '. . . any change of the scope or effect of an existing statute, whether by addition, omission, or substitution of provision, which does not wholly terminate its existence, whether by an act purporting to amend, repeal, revise, or supplement, or by an act independent and original in form, . . .' [Citation.] A statute which adds to or takes away from an existing statute is considered an amendment. [Citation.]" (*Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 776; accord, *Mobilepark West Homeowners Assn. v. Escondido Mobilepark West* (1995) 35 Cal.App.4th 32, 40.) Any rule that seeks to recontrol rents after a Costa-Hawkins vacancy will effectively amend the RSO. Elections Code section 9217 requires that the issue be presented to the voters.

F. *Severability*

We have concluded that New Rules 1601, 1602, 1603, 1605, and 1607 are invalid. The parties do not address the validity of the final New Rule, New Rule 1600. City does assert that if this court "were to find that some particular provision of the [New] Rules [was] inconsistent with [the] Petris [Act] or Costa[-]Hawkins that [New] Rule could be severed from the [New] Rules without setting aside [the New] Rules in their entirety as the trial court did." However, City does not make this argument until the conclusion of its reply brief, and City fails to support the argument with pertinent authority. Accordingly, the argument is doubly forfeited. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived. [Citations.]"]; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3 [arguments raised for the first time in a reply brief will not be considered unless good

reason is shown for failure to present them earlier].) In particular, City does not explain how New Rule 1600 may be implemented in the absence of the other New Rules. Accordingly, we conclude City has not shown the trial court erred in invalidating New Rule 1600. This result is further supported by the fact the New Rules were promulgated together as a package in response to litigation regarding the establishment of maximum legal rents, and the Board did not include a severability provision.

G. *Landlords' Remaining Contentions*

Landlords provide many additional reasons why the New Rules are invalid, including: New Rules 1601 and 1602 violate the Petris Act; New Rules 1601, 1602, and 1607 violate Costa-Hawkins; New Rules 1601, 1602, and 1607 are unlawfully retroactive; adoption of the New Rules was unlawful because the Board was improperly constituted and because the RSO rules regarding constitution of the Board violate their rights to due process; adoption of the New Rules was unlawful because the Board improperly seats alternates and allows them to fully participate in proceedings; and adoption of the New Rules violated Landlords' rights to substantive due process.

This court has already concluded the New Rules are invalid for other reasons. Landlords fail to provide any reasoned argument why this court should reach any of their additional contentions. It may be that Landlords desire this court to issue rulings on all of their contentions and direct the trial court to modify its statement of decision accordingly, such that the additional rulings will be within the scope of the language in the writ of mandate prohibiting City from taking actions contrary to the statement of decision. However, we conclude, in part II. below, that language in the writ is unwarranted and must be vacated. Therefore, the language of the writ provides no rationale for this court to reach Landlords' additional contentions.

Because we review the result below and not the trial court's reasoning (*Davis v. Municipal Court* (1988) 46 Cal.3d 64, 72, fn. 3), and because the trial court's judgment is proper for the reasons previously discussed (with the one exception discussed in part II. below), we need not and do not reach Landlords' additional contentions.

II. *The Language in the Writ of Mandate Prohibiting Future Conduct Is Unwarranted*

The trial court's writ of mandate commands that City take no action contrary to its statement of decision. City contends this injunctive relief is unwarranted because there was no evidence to suggest it would not comply with the trial court's orders. City further contends the injunction is so broad that it is not clear what conduct it encompasses. Landlords rejoin that the evidence before the trial court supports the injunction and that the statement of decision clearly explains what City may and may not do.

The trial court's March Order similarly commanded City to set aside the Urgency Ordinance and "take no action . . . contrary to [the s]tatement of [d]ecision in this matter." In *Page Mill I*, this court concluded this language was not warranted because the evidence before the trial court was not sufficient to indicate City would not comply with the writ. There was a similar lack of evidence justifying the equivalent injunctive relief in the writ of mandate issued by the November Order.

A trial court's decision granting injunctive relief "rests within its sound discretion and will not be disturbed on appeal absent a showing of a clear abuse of discretion. [Citation.]" (*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 912 (*Shapiro*).) A reviewing court exercises its independent judgment when statutory construction is required, but "to the extent the trial court had to review the evidence to resolve disputed factual issues, and draw inferences from the presented facts, an appellate court will review such factual findings under a substantial evidence standard." (*Ibid.*) In addition, we must also consider separation of powers principles when determining the propriety of injunctive relief against City. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1464.) "[O]ur Supreme Court has emphasized that 'principles of comity and separation of powers place significant restraints on courts' authority to order or ratify acts normally committed to the discretion of other branches or officials. [Citations.] In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obligates the judiciary to respect the separate constitutional roles of the Executive and the Legislature.' [Citation.]" (*Ibid.*)

When issuing its oral ruling, the trial court did not include prospective injunctive relief and did not make any findings to support such relief. Landlords maintain there is sufficient evidence to justify the injunction, and rely on some of the same evidence they cited to support the March Order's injunctive relief. In particular, Landlords cite a letter to the trial court preceding the March Order, in which Landlords stated, "City has indicated that, despite the [c]ourt's order, it does not feel bound by the Certificates . . . . City employees have instructed tenants of [Landlords] that the noticed rent increases were illegal and should not be paid and have recently attempted to 'recalculate' [C]ertificates to correct the alleged errors which have already been rejected by [the trial c]ourt." Landlords also cite a February 8, 2008 decision by a hearing examiner in which he calculated rent increases using the methodology advanced by City. We do not find this evidence sufficient to warrant the prohibitory language.

As we discussed in *Page Mill I,* there is a rebuttable evidentiary presumption that public officers will perform their official duties properly and act in accordance with the law. (See Evid. Code, § 664 ["It is presumed that official duty has been regularly performed."]; *Housing Authority v. Forbes* (1942) 51 Cal.App.2d 1, 9 ["There is a presumption, well recognized by the cases, that public officers will carry out their functions and exercise their powers in accordance with the law."]; *Ellis Landing & Dock Co. v. Richmond* (1925) 70 Cal.App. 720, 723 ["It is to be presumed that the council will do its duty and will not attempt to willfully violate the law."]; see also *Jackson v. City of Los Angeles* (1999) 69 Cal.App.4th 769, 782 [Evid. Code, § 664 presumption is rebuttable].) For example, in *Cooke v. Superior Court* (1989) 213 Cal.App.3d 401 (*Cooke*), a county's resolution showed its good faith willingness to perform its statutory obligations to provide dental services. (*Id.* at pp. 416-417, disapproved on other grounds in *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 106, fn. 30.) The petitioners argued a peremptory writ was nevertheless necessary to ensure the county would not rescind the resolution and return to its improper course of conduct. (*Cooke*, at p. 417.) The Court of Appeal declined to issue a writ, stating "we refuse to assume bad faith on the part of the [c]ounty or its [h]ealth [o]fficer. Instead, we presume official duty

will be regularly performed and the [c]ounty will comply with the law. [Citations.]" (*Id.* at p. 418.)

City correctly notes that "[a]n injunction cannot issue in a vacuum based on the proponents' fears about something that may happen in the future. It must be supported by actual evidence that there is a realistic prospect that the party enjoined intends to engage in the prohibited activity. [Citations.]" (*Korean Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084 (*Korean Presbyterian*).) In *Page Mill I*, we found Landlords' letter and the administrative decision did not constitute such actual evidence and did not rebut the Evidence Code section 664 presumption. This same evidence is no more persuasive to support the injunctive relief granted in the November Order.

Landlords also contend the Board's adoption of the New Rules, which occurred shortly after the trial court's rejection of the Urgency Ordinance, supports the injunctive relief. We disagree. The trial court's March Order rejected City's proposed methodology for calculating rent increases, but City appealed the issue. Therefore, the Board did not act improperly in continuing to advance its interpretation of rent increase calculations by promulgating the New Rules. Although we have ultimately concluded that the New Rules are invalid, we do not see their enactment as an indication City will fail to perform its official duties and comply with the writ. Accordingly, this evidence does not warrant injunctive relief. (*Korean Presbyterian, supra*, 77 Cal.App.4th at p. 1084.)

Landlords quote from *Shapiro, supra,* 96 Cal.App.4th 904 and *California Alliance for Utility etc. Education v. City of San Diego* (1997) 56 Cal.App.4th 1024 (*California Alliance*), to support the issuance of injunctive relief. In particular, they quote *Shapiro* for the statement "past actions may to some extent evince a relationship to present or future conduct." (*Shapiro*, at p. 916.) They further rely on *Shapiro* and *California Alliance* for the proposition that " 'courts may presume that [a] municipality will continue similar practices in light of [the] city attorney's refusal to admit violation[.]' [Citation.]" (*Shapiro*, at p. 916; see also *California Alliance*, at p. 1030.) Landlords

cited these cases in support of the March Order's injunctive relief. As we explained in *Page Mill I*, *Shapiro* and *California Alliance* interpreted remedies available under the Ralph M. Brown Act (Gov. Code, § 54950 et seq.). Because this appeal does not involve a cause of action under that statute, Landlords' selected quotations are inapplicable.

In sum, the evidence before the trial court was not substantial and did not rebut the presumption under Evidence Code section 664 that City would comply with the writ. We therefore vacate that portion of the court's writ prohibiting City from taking any action contrary to the trial court's statement of decision.

DISPOSITION

The portion of the trial court's November 26, 2008 writ of mandate prohibiting City from taking any action contrary to the trial court's statement of decision is hereby vacated. The trial court's judgment is otherwise affirmed. The parties shall bear their own costs on appeal.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.